



Steven L. Ledoux
Town Manager

1/27 ORD
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TOWN OF ACTON
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Acton, Massachusetts, 01720
Telephone (978) 929-6611
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FILE COPY

December 12, 2013

Justin Peterson
Not Your Average Joe's
305 Main Street
Acton, MA 01720

Not Your Average Joe's Corporate Offices
151 Campanelli Drive Suite C
Middleborough, AM 02346

RE: Alleged Over serving

Dear Mr. Peterson:

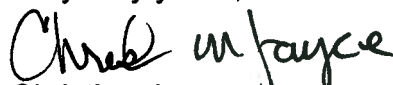
On November 30, 2013 the Acton Police Department responded to several calls about the person walking down the middle of the street on Main Street and Central Street. Upon locating the man, the Police Officer took him in to Protective Custody because of his excessive intoxication. The police asked the individual where he had last been served, to which he replied at your establishment.

The Board of Selectmen takes liquor service and granting of licenses to serve alcoholic beverages very seriously.

The Board requests that you as Manager appear before the Board of Selectmen on January 27, 2014 in the Francis Faulkner Hearing Room at town hall to discuss this over serving violation.

Please contact me to confirm your attendance at this Selectmen's Meeting at cjoyce@acton-ma.gov

Very truly yours,


Christine Joyce
Town Manager's Office

Cc: Chief Widmayer

Christine Joyce

From: Frank Widmayer
Sent: Tuesday, December 10, 2013 10:47 AM
To: Christine Joyce; Steve Ledoux; Mark Hald
Subject: RE: recent over serving incident at Not Your Average Joe's

The facts are correct. I have a lot more information coming to you today but after a subsequent investigation I also recommend not including Benjarong.

Frank J. Widmayer III
Chief of Police
978-263-2911

From: Christine Joyce
Sent: Tuesday, December 10, 2013 10:43 AM
To: Frank Widmayer; Steve Ledoux; Mark Hald
Subject: recent over serving incident at Not Your Average Joe's

The Police Chief notified our office yesterday that there had been an incident with regard to over serving at NAI's.

From the police report it looked as though the person who was on foot and not driving a vehicle was in danger of being hit by a car as he was so intoxicated that he was walking home in the middle of the street.

When the officer's asked where he had been he replied he had two drinks a Benjaroung and then walked to NAI's where he was over served and as you will see, the manager or server followed the man out and asked if he were driving. According to the man, once they heard that he was not driving, the employee went back inside.

He proceeded to walk home and several people reported his walking down the middle of the road to the police. The Upon the police officers arrival, it was determined that he was so intoxicated that he fell down in the driveway of 30 Central Street. The Police Officer took him into protective custody. His blood alcohol level taken at the Police station was .23.

My suggestion is that we do not include Benjarong in this as he said he only had 2 drinks there and proceeded to walk to NAI'S where he was grossly over served by their staff (4 or 5 scotch drinks). While the person who walked him out asked about whether or not he was driving did the right thing, the restaurant did not by allowing him to over consume Alcohol.

To that end, I believe that the Board needs to have the manager of NAI's invited to a BOS meeting to explain how this happened as this over service was contrary to their employee procedures. And further to ask what they intend to do going forward.

I note that they served him way too much alcohol not knowing he was NOT DRIVING – fact is they over served this man and agree with Lieutenant Grey's findings in that regard.

Acton Police Department

InterDepartmental Memo

From: Frank J. Widmayer, Chief of Police **Date:** December 9, 2013
To: Steve Ledoux, Town Manager
Subj: Not Your Average Joe's and Benjarong over serving complaint

I have attached some updated information regarding the incident that occurred at Not Your Average Joe's on 11/30/13. Deputy Chief Burrows notified the establishments at my request and reported some employee statements.

At this time it appears that Benjarong Restaurant had no part in over serving the individual so I recommend that they be dropped from any action taken by the Board of Selectmen.

I have concerns after reading the statements submitted by Not Your Average Joe's and request that the Board of Selectmen call the manager in for a liquor license hearing. It appears to me that there were errors in judgment made by several employees at the restaurant.

My biggest concern is that a patron was allowed to leave the establishment on foot in cold weather where he could have easily been hit by a vehicle or fallen and died of exposure.



Frank J. Widmayer III
Chief of Police



**ACTON POLICE DEPARTMENT
INTERDEPARTMENTAL
COMMUNICATIONS**

To: Chief Widmayer
From: Deputy Chief Burrows *JS*
Re: Possible Liquor License Violation
Date: December 9, 2013

On December 5th I received a memo from Lieutenant Grey in regards to a resident that was placed into protective custody by Off. Krug that made statements about being served at Benjarong and Not Your Average Joe's on Saturday night to Lt. Grey. The man in custody stated that he had two drinks at Benjarong in the afternoon and then 4 or 5 scotch drinks at Not Your Average Joe's. The man in custody took the breathalyzer and registered a .23 and was sick in the booking area vomiting and appeared to the officers to be highly intoxicated.

On December 6th after speaking to you, I responded to Not Your Average Joe's at 2:34pm and spoke to Restaurant Manager Justin Peterson and advised him of the incident and the information we now have along with the subjects name and physical description. I advised him to please save all documents and any video because we were reporting the information to the liquor licensing authority.

I then responded to Benjarong and they were closed. I asked Sgt. Cooney to respond there when they opened and advise them of the same. Sgt. Cooney reports that he did at 5:15pm and the owner reported that she did not remember anyone by that description and there is no video.

On December 6th at 4:20 I received an email from Justin Peterson thanking me for bringing this to his attention and that staff on duty have prepared statements. He advised that the General Manager of Not Your Average Joe's Tim Hislop will drop them off. On Monday I received a packet of information, which appears to be the statements from a manager, two bartenders and a sous chef along with a receipt for what appears to be (2) 7 and 7's and (2) Dewars on the rocks. The receipt is dated November 30th from 7:15pm to 8:54pm.

All the above mentioned documents are attached to this memo.

Rich Burrows

From: John Cooney
Sent: Friday, December 06, 2013 5:59 PM
To: Rich Burrows
Cc: Ray Grey
Subject: Benjarong Restaurant

Deputy,

On Friday 12/06/2013 at 17:35 I spoke with Prayong Techasouvapah, owner and bartender of Benjarong Restaurant, 214 Main St. Acton. I advised her that the town of Acton was investigating possible liquor license violations on Saturday 11/30/13 involving [REDACTED] being over served alcohol. I explained that [REDACTED] stated that he had two drinks at Benjarong before going to Not Your Average Joe's, where he was served 4-5 drinks. She stated that while she was the bartender that night she does not remember a customer fitting his description. They do not have a video surveillance system.

John

Rich Burrows

From: Peterson, Justin [jpeterson@nyajoes.com]
Sent: Friday, December 06, 2013 4:20 PM
To: Rich Burrows
Cc: Hislop, Timothy; Chiulli, Meredith; Gormley, Thomas; Mendes, Gilberto
Subject: Thank You

Good Afternoon Deputy Burrows,

I just wanted to take the time to say thank you for informing us of this very serious matter. We pride ourselves in excellence in all areas of community involvement and especially in the area of responsible alcohol service. All of our team members are serve safe alcohol certified and well aware of responsible service. Having been a Bartender for 12 years myself I know the severity of this issue. We have taken the liberty of gathering written statements from all Managers and employees involved with the incident of 11/30/2013. We have also done some digging of our own. The accused made a statement of having multiple drinks well over the legal limit and We have the documentation to prove otherwise via our ability to look up checks from that night. Tim Hislop will be going down to the station to say thank you for making us aware of this issue so we could act quickly and responsibly to this communal concern.

Regards,

Justin Peterson

Justin D. Peterson | Manager | Not Your Average Joe's

✉: 305 Main St | Acton, MA | 01720

☎: 508.635.0101 | 📧: acton@nyajoes.com

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Peterson, Justin

From: Chiulli, Meredith
Sent: Friday, December 06, 2013 4:15 PM
To: Hislop, Timothy; Peterson, Justin
Subject: Saturday's Statement

Saturday night we had a guest in our restaurant whom we decided to shut off upon consuming his second drink. Tracey and Nate being the bartenders on that night brought to my attention that they served the guest two drinks upon his arrival and did not feel comfortable serving a third round, even though he might have been able to manage one more. I told both Tracey and Nate that if they did not feel comfortable serving the gentleman to absolutely take the initiative and do not serve the guest. I suggested they offer the guest some complimentary bread and put some water in front of him as they did, and they also offered him some left over cookies and cream smoothie. I also informed them that I would support them in any decision they made and that if the situation escalated to any degree out of their control I would absolutely be there to step in and take control of the situation. At that point I informed Tom our sous chef of the situation and asked for his assistance in the off chance the guest was not accepting of our decision.

I monitored the guest for the majority of the time he was in the restaurant, but for a busy Saturday night at some moments I had to walk away for other priorities. When I returned to the bar the guest was engaging in conversation with the guests sitting directly to the right of him. The other guests were accepting of his conversation and engaged back with him. He walked outside to smoke a cigarette and left his jacket on the bar stool. I followed the gentleman outside and told him very nicely that we were concerned about his safety after being served the two drinks, not knowing where he had come from before, and we wanted to be cautious for his well being so we were going to stop serving him. I pushed for him to take a taxi cab home on us so that I could be assured he returned home safe, but the gentleman would not take me up on the offer, as he insisted he was fine. He informed me his wife had the car because she was out with their children for the night and he was walking home that evening. I did not want to push the guest to the point where the situation could have escalated so I thanked him for understanding and returned into the restaurant.

The gentleman then returned into the restaurant, went to the bathroom, sat for a few minutes, grabbed his coat and left. He thanked me a second time on his way out for my concern. After he left the restaurant, I walked outside to make sure he was not getting into a car in the parking lot and I saw him walk off the property up towards the Mobile gas station located across the street from our plaza. I then returned to the bar area in the restaurant and made sure guests were all comfortable and did not need anything as I did not want to draw any unnecessary attention to the guest or the situation. As we were unsure of what this gentleman had consumed before he arrived at our restaurant, when he did arrive, we did not feel as though there was any reason to not serve him. Once we felt as though he should not have been served any longer we made the decision to shut him off.

Meredith Chiulli | Restaurant Manager | Not Your Average Joe's
1305 Main Street | Acton, MA | 01720
978.635.0101 | 1.978.635.1005 |
mchiulli@nyajoes.com

Tracy Statement: Sat 11/30 Incident

~~long~~ He showed no signs of intoxication upon entering the restaurant. While here, he was served two drinks. After the ~~first~~ second, he requested a third, but I questioned his sobriety. At this point, I got management involved, and she went over to assess the situation. In the mean time, I gave him a cookies & cream smoothie which was non-alcoholic. About thirty minutes later he seemed to be more sober so I gave him his final drink, and thirty minutes following, he paid his bill & departed the restaurant. Meredith, the manager, told me that she trusted my judgment.

12-6-13

Tracy Mordant

11/30 Incident Nathan Forringer Statement

On Saturday, November 30th I was one of the bartenders on. The man walked into the bar and ordered a 7 and 7. I made it and gave it to him. Through the course of the night he ordered a total of 4 drinks. After the second drink he ~~got~~ ordered a third and got up to go to the bathroom. At this point me, and my manager saw ~~him~~ ~~standing~~ that he could not really walk. My manager went up and asked if he was all right. The man went outside to smoke, at which point we offered to pay for a taxi, or if we could find a ride for him. He declined the offer and came back in. We offered him bread, and although ordered a fourth drink he only had a few sips before leaving. ~~In total, I estimate he was served 4 drinks.~~ He was in the restaurant for two hours and ~~was~~ only had a little over 3 drinks.

Nathan Forringer

... Sat 11/30 Incident Statement: Chef Tom

ON SAT 11/30/2003 AT APPROXIMATELY 8:30 PM.
THE MANAGER ON DUTY, MEREDITH CHIULLI, ASKED
IF I WOULD WATCH HER RESPOND TO A REQUEST
FROM A STAFF MEMBER.

MEREDITH INFORMED ME THAT A BARTENDER
BELIEVED A MAN IN THE BAR WAS INTOXICATED, SHE
ASKED ME TO "WITNESS IN CASE OF TROUBLE".

THE MAN IN (~~QUESTION~~) QUESTION WAS NOT DRINKING
AT THE TIME.

MEREDITH THEN TOLD ME "EVERYTHING WAS FINE!"
I RETURNED TO WORK, 10 MINUTES LATER I RETURNED
TO THE BAR AREA ONLY TO LEARN THAT THE GENTLEMAN
HAD LEFT.

12/6/13
Tom Gormley

X

NOT YOUR AVERAGE JOE'S - Acton

Check: 0310 Table: 9 #Party: 0
Server: NATHAN FORRINGER 19:15
BAR

SEAGRAMS 7 W/MIXER	6.59
& SPRITE	0.00
SEAGRAMS 7 W/MIXER	6.59
& SPRITE	0.00
DEWERS RX	7.79
DEWERS RX	7.79

*Paired not
Served*

	Sub Total:	28.76
	Tax	1.80
20:54	Total:	30.56

Payments:	Amt-Tend	Tip/Chg	Tally
CASH	40.00	0.00	
CASH-PAIDOUT		9.44	30.56
11/30/2013 20:54			----- 30.56

Terminal: BAR
Cashier: NATHAN FORRINGER

TIM HISLOP		ACTON RESTAURANT 1075-835-0001 1075-835-0001
GENERAL MANAGER		ACTON
805 MAIN STREET ACTON, MA 01720		WWW.NYAJ.COM

JUSTIN PETERSON		ACTON RESTAURANT 1075-835-0001 1075-835-0001
RESTAURANT MANAGER		ACTON
805 MAIN STREET ACTON, MA 01720		WWW.NYAJ.COM

MEREDITH CHIULLI		ACTON RESTAURANT 1075-835-0001 1075-835-0001
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